

APPEAL NO. 180295
FILED APRIL 5, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 18, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) reached maximum medical improvement (MMI) on July 25, 2017; and (2) the claimant's impairment rating (IR) is 21%. The appellant (self-insured) appealed disputing the ALJ's determinations. The self-insured contends that the ALJ did not accurately document the parties' stipulation regarding the compensable injury. The self-insured also contends that the ALJ misrepresented the evidence in his decision.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury). The self-insured contends on appeal that the parties stipulated that the compensable injury is a right wrist fracture and **sprain** of the left little finger; however, the stipulation in Finding of Fact No. 1.D. states the compensable injury is a right wrist fracture and **strain** of the left little finger. The record does not clearly denote the exact stipulation made by the parties at the CCH. The claimant testified that he was injured when he fell down while walking up steps.

(Dr. C), the designated doctor, examined the claimant on July 25, 2017, and certified that the claimant reached MMI on July 25, 2017, with a 21% IR, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. C's accompanying narrative report shows that he considered a right wrist/hand fracture and a left little finger sprain. Dr. C assessed 23% upper extremity (UE) impairment based on loss of range of motion (ROM) of the claimant's right wrist and thumb, and 16% UE neurological impairment for abnormal motion and sensory loss, for a combined 35% UE impairment. Using Table 3 on page 3/20 of the AMA Guides, Dr. C converted 35% UE impairment to 21% whole person impairment. We note that Dr. C does not explain in his narrative report why he believed a right wrist fracture and left little finger sprain resulted in motor and sensory loss that required an IR of 16%.

(Dr. V), the post-designated doctor required medical examination doctor, examined the claimant on September 8, 2017, and certified that the claimant reached

MMI on May 1, 2017, with a 6% IR. Dr. V's attached narrative report lists diagnoses of a right wrist sprain/strain with "[triangular fibrocartilage complex (TFCC)] tear and ulnar abutment syndrome – S/P ulna shortening osteotomy and TFCC debridement" and left small finger sprain/strain. Dr. V assessed 6% UE impairment for loss of ROM and 4% impairment for sensory loss of the claimant's right wrist for a combined 10% right UE impairment. Dr. V also assessed 0% impairment for loss of ROM of the claimant's left little finger. Using Table 3 on page 3/20 Dr. V converted 10% UE impairment to 6% whole person impairment. Dr. V noted in his narrative report that "[t]he significant ROM and ulnar nerve deficits documented by [Dr. C] were not reproduced today. . . ."

On October 6, 2017, Dr. V responded to a letter from the self-insured's counsel clarifying the nature and extent of the claimant's compensable injury as a right wrist/hand fracture and left pinky finger sprain, and requested Dr. V opine whether these diagnoses affected his certification of MMI and IR. Dr. V responded that it did not, and he included a corrected Report of Medical Evaluation (DWC-69) to reflect the compensable injury of a right wrist fracture and left pinky finger sprain.

The ALJ stated the following in the Discussion section of the decision and order:

On September 8, 2017, [the] [c]laimant was examined by [Dr. V], who certified that [the] [c]laimant reached MMI on May 1, 2017, and assigned a 6% IR. . . . [Dr. V] testified and explained why he disagreed with [Dr. C]. However, the DWC-69 and accompanying report from [Dr. C] do not indicate that the compensable conditions/injuries were considered and rated.

Although the ALJ stated Dr. C does not indicate that he considered and rated the compensable injury, the ALJ adopted Dr. C's MMI/IR certification. Dr. C and Dr. V both considered a right wrist fracture and left little finger sprain. The ALJ's statement that Dr. C does not indicate that he considered and rated the compensable injury is a misstatement of the evidence in this case, which we view as a material misstatement of fact. Accordingly, we must reverse the ALJ's determinations that the claimant reached MMI on July 25, 2017, with a 21% IR, and remand the issues of MMI and IR to the ALJ for further action consistent with this decision

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of material facts in evidence regarding Dr. C's and Dr. V's MMI/IR certifications. The ALJ is to clarify with the parties whether the compensable injury is in the form of a sprain or strain of the left little finger. Section 401.011(30) provides MMI means the earlier of: (A) the earliest date after

which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated; (B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or (C) the date determined as provided by Section 408.104. The ALJ is to either take a stipulation from the parties or make a finding of fact as to the date of statutory MMI.

Dr. C is the designated doctor in this case. On remand the ALJ is to determine whether Dr. C is still qualified and available to be the designated doctor. If Dr. C is still qualified and available to be the designated doctor, the ALJ is to seek clarification from Dr. C to explain why he believes a broken right wrist affects the claimant's ulnar and median nerve and why motor and sensory loss should be rated.

If Dr. C is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the compensable injury of (date of injury). The ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a right wrist fracture and a left little finger sprain or strain, whichever condition to which the parties stipulated. The ALJ is also to inform the designated doctor the date of statutory MMI, and that the date of MMI cannot be after the statutory date of MMI.

The parties are to be provided with any response from Dr. C and any new MMI/IR certification and allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **VIA METROPOLITAN TRANSIT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JEFF ARNDT, PRESIDENT AND CEO
800 WEST MYRTLE
SAN ANTONIO, TEXAS 78212.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge